IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.592 OF 2006.

Kantilal M.Vardhan & others. ... Appellants.

Versus.

The Municipal Corporation for Greater Mumbai and anr. ... Respondents.

Shri Y.T.John for the Appellants.

Shri J.Xavier for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 29th MARCH, 2006.

P.C.:

1. Admit. The learned Advocate for Respondent No.1 waives service. The learned Advocate for the Appellant seeks permission to delete the name of Respondent No.2. Permission is granted at the risk of the Appellants. Considering the facts and circumstances of the case, the Appeal is taken up for final hearing forthwith.

2. By the impugned order the suit filed by the Appellant has been dismissed for default and non-prosecution on the ground that the office objections in the suit as well as in the Notice of Motion were not removed by the Appellants. The learned Advocate for the appellants states that he will remove office objections within a period of three weeks from today.

3.. In view of this statement, the impugned order deserves to be set aside and the suit deserves to be

restored.

4. Hence the following order is passed:

i) The impugned Judgement and order is quashed and set aside and the L.C.Suit Stamp No.4962 of 2004 is restored subject to condition that the appellant will remove all office objections in the suit and the Notice of Motion within a period of three weeks from today. If the objections are not removed, the order of dismissal will stand.

ii) As the name of Respondent No.2 is deleted at the risk of the Appellants from the cause title of this appeal, it is made clear that the suit is not restored as against the original Defendant No.2 and the suit will stand dismissed as against Defendant No.2. Even if the office objections are removed by the Appellant as permitted by this order, the suit will stand restored only as against Respondent No.1/ Defendant No.1 herein.

Judge.